Civil Misc. Writ Petition No. 2802 (S/S) of 2001

(Old No. 32946 of 1993)

Kailash Chandra Upadhyay --------- Petitioner

Vs.

State of U.P. through Secretary,

Department of Education, U.P.,

Lucknow and four others. --------- Respondents

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Hon'ble P.C.Verma,.J.

This writ petition has been filed by the petitioner seeking writ of certiorari to quash the order dated 19.08.1991 passed by respondent No.5, contained in Annexure No.6 to the writ petition, directing the recovery of excess amount of Rs. 18,877.60 paid to the petitioner between the period 16.08.1983 to 31.10.1988.

The petitioner was initially appointed as Librarian in Almora Degree College, which was affiliated with the Agra University at that time, in the pay scale of Rs. 280-860/-, which was subsequently revised Rs. 690-1420/-. Almora Degree College was taken over by the Government and became Government Degree College. After the establishment of Kumaon University the said Degree College was made a Constituent College of the Kumaon Univerisity in the year 1975. On the transfer of the said Government Degree College as Constituent College of the Kumaon University, a letter dated 04.06.1980 was issued by the Director of Higher Education, U.P., Allahabad inviting option from the employees of the Constituent Degree College either to opt to serve under the University or to continue as a Government employee. The petitioner opted to serve in the Constituent College of the Kumaon University. His option was accepted with effect from 15.08.1983. On the day his option was

accepting the petitioner was drawing salary in the pay scale of Rs. 690-1420/- and in the same pay scale, the petitioner received salary upto June 1989. In July 1989 the annual increment of the petitioner was stopped on the ground of some audit objection and consequently the impugned recovery certificate was issued on 19.08.1991.

In this writ petition the recovery as well as stoppage of increment have been stayed by the interim order of this Court, as a result of which the petitioner continued to get the increment and recovery was not made from him. The petitioner has retired in the year 1998.

The challenge of the petitioner was that the stoppage of increment on the ground of audit objection was illegal and the amount of Rs. 18,877.60 was illegally sought to be recovered as no amount in excess was paid to the petitioner. According to the learned counsel for the petitioner, the petitioner is graduate of the year 1964 in Library Science from Banaras Hindu University and pay scale of Rs. 690-1420/- was admissible to the Librarians who possessed the qualification of degree in Library Science in terms of the Government Order dated 01.06.1982.

The counter affidavit is silent on these grounds of challenge. It is only stated in the counter affidavit that at the relevant time petitioner was entitled to the pay scale of Rs. 515-860/- as per the Government Order for the Government Degree College. This was the objection raised by the audit party.

It appears that neither the audit party nor the university authorities considered the Government Order dated 01.06.1982, which provided two pay scales for the post of Librarian. One is Rs. 690-1420/- for those who were graduates in Library Science and other is Rs. 515-860/- for those who were not graduates in the Library Science. Since the petitioner was graduate in Library Science, he was rightly been paid the salary in the pay scale of Rs. 690-1420/-.

Therefore, it was a question of excess payment of amount of Rs. 18,877.60 and on this ground the stoppage of increment is also not tenable. Therefore, the order of recovery dated 19.08.1991 is hereby quashed.

It has been further submitted that the petitioner has not been paid revised pay scale with effect from 01.01.1986 in the pay scale of Rs. 2350-43000/- on account of pendency of this writ petition. The University authorities are directed to pay the arrears of salary in the pay scale of Rs. 2350-4300/- w.e.f. 01.01.1986 and shall pay all the post retiral dues to the petitioner within in a period of three months from the date of production of certified copy of this order.

The writ petition is disposed of accordingly. No order as to costs.

21.08.2003

P.Singh

P.C.Verma,j